SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 724

SUBURBAN LUMBER COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

For Opinions Below, Jurisdiction, Statement of the Case and Questions Presented see pages 1 to 5 of the Petition.

1. The Circuit Court of Appeals was without jurisdiction to decree enforcement of the alleged order of the National Labor Relations Board because a copy of the alleged Order was never served on petitioner (respondent below).

It is necessary as a prerequisite to the enforcement by the Circuit Court of Appeals of an Order of the National Labor Relations Board, that a copy of the Order be served on the person charged with unfair labor practices.

Section 10(c) of the National Labor Relations Act provides that:

> "* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then *the Board shall state its findings of fact and shall issue and cause to be served on such person an Order* requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees, with or without back pay, as will effectuate the policies of this Act." (49 Stat. 453, 29 U. S. C. A. Section 160(c)).

The Act further provides, in Section 11(4):

> "Complaints, *orders* and other process and papers of the Board * * * may be served either personally or by registered mail or by telegraph or by leaving a *copy* thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same." (49 Stat. 455, 29 U. S. C. A. Section 161(4)).

Surely the Act means exactly what it says; that a copy of the Board's Order shall be served on the person allegedly engaging in an unfair labor practice. This provision of the act is so clear that no deviation from the prescribed method can be sanctioned.

In *American Sugar Refining Co.* v. *Delaware L. & W. R. Co.*, 207 Fed. 733 (C. C. A. 3rd Cir.) the Court had occasion to discuss the use by the Interstate Commerce Commission of the broad powers vested in it. The Court said, at page 737:

> "* * * So far, however, as carriers are subjected by the act to the administrative authority of the

> Commission which it establishes, that authority must be strictly pursued. Not otherwise, can its merely administrative orders be enforced. In other words, *acts of the Commission, in exercise of its administrative functions, must, in order to be effective, strictly conform to those provisions and requirements of the act by which its authority is prescribed and defined.*"

The language used by the Court in that case is strikingly applicable to the question under consideration here. Here the reasons for strict adherence by the Board to the requirements of the Act are patent, in view of the vast discretionary control over industry vested by Congress in the Board.

In the present case the alleged Order was never served on the petitioner. The Affidavit as to Service (R. 4) which constitutes the Board's only legal proof of what, if anything, was served upon petitioner, states merely that a copy of the Board's "*Decision*" was served. It was admitted by the Board in its memorandum entitled "Opposition of National Labor Relations Board to Motion of Respondent to Add Certain Papers to the Record", (R. 126) that the papers served upon petitioner were different from the original Decision and Order in that the date line was omitted and the lines upon which the signatures of the members of the Board allegedly appear on the original, are blank. That which was actually served on petitioner appears in the Record at pages 109 to 124.

The Circuit Court of Appeals, in its opinion in this cause conceded that what was served upon petitioner was not a copy of the Board's Order but *nevertheless held that it made no difference whether a copy of the Board's Order was served on petitioner or not.* The court stated (R. 138):

> "Earlier in this opinion we quoted the service of process provision of the National Labor Relations Act. It is in the conventional form and there is, therefore,

> plenty of interpretative authority. *The question is not, of course, whether what was served here is a copy. It requires no citation to sustain the view that an unsigned and undated paper is not a copy of an order that has a signature and a date. The issue is rather should we give a strict or a liberal construction to these service statutes.* The courts disagree and are about evenly divided * * *'' (citing 50 J. C., Process, Effect of Lack of Proper Signature).

It is obvious that petitioner is not required to act on the decision of the Board alone. *Carolina Aluminum Co.* v. *Federal Power Commission,* 97 F. (2d) 435 (C. C. A. 4th Cir.); *Shannahan* v. *U. S.,* 20 Fed. Supp. 1002 (Dist. Ct. N. D. Ind.). The mere finding that an employer is guilty of unfair labor practices means nothing in the absence of an order on such employer to cease and desist from the specified acts and to take affirmative action if that is required. Therefore it is incumbent on the Board to effectuate its decision by issuing an order.

Any formal order must go through a series of preliminary stages before it becomes the mandate of the tribunal issuing it. Even the final draft of a paper intended to become an order is not, *per se,* an order. Some specific action must be taken whereby the lifeless words on the paper become the living mandate of the court or board. It can admit of no dispute that from the earliest days of our jurisprudence, this action has been the signing of the order by the properly constituted authority. *Fox* v. *Lantrip,* 162 Ky. 178, 172 S. W. 133.

This must necessarily be so, particularly in the case of a modern administrative board. In the case at bar, indeed, the Board avers that two of its members did sign the alleged Order. But petitioner received no evidence of this. The Circuit Court of Appeals concedes what the record clearly

shows, that what was served on respondent was *not a copy of the Board's order.* It was not even a copy of the decision but it was called "*Decision*" by the Board in its communication to petitioner (R. 109), as well as in its Affidavit as to Service (R. 4). The papers served on petitioner were undated and unsigned. Surely this was not evidence to the petitioner of the fact that an order had actually been entered, with which it must immediately take steps to comply. The most that petitioner might have been expected to infer was that a decision and order in such form had been submitted to the Board. Petitioner had a right to expect that it would be notified of the entry of the Board's Order by service upon it of a copy thereof showing, by date and signature, that such an order had been made by the Board and was actually in effect. The violation by the Board of this mandatory provision of the statute was thus not a mere technical violation. It was a total noncompliance with a jurisdictional requirement.

We respectfully submit that the attempt by the Board to enforce against petitioner an order requiring affirmative action by petitioner within 10 days of the date thereof, and of which petitioner had no notice, constitutes a denial to this petitioner of the due process of law guaranteed to it by the Fifth Amendment to the Constitution of the United States.

2. The Circuit Court of Appeals was without jurisdiction in this case because a certified transcript of the record in the proceeding before the Board was not filed with that Court in compliance with the provisions of the Act.

It is a condition precedent to the jurisdiction of the Circuit Court of Appeals, that a certified transcript of the entire record of the proceeding including the Order of the Board be filed with that court.

Section 10 (e) of the Act reads in part:

> "The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * *and shall certify and file in the court a transcript of the entire record* in the proceeding, *including* the pleadings and testimony upon which such order was entered *and the findings and order of the Board.* Upon such filing, the court shall cause notice thereof to be served upon such person, *and thereupon shall have jurisdiction* of the proceeding and of the question determined therein * * *." (49 Stat. 453, 29 U. S. C. A. Sec. 160 (e).)

The words of the statute are unequivocal and mandatory. To perfect a proceeding for enforcement, the Board *shall* do certain things. Among these is the filing of a certified transcript of the record of proceedings before the Board, which *shall* contain, among other things, the Order of the Board. *Thereupon,* says the statute, the court shall have jurisdiction. *A fortiori,* if these requirements are *not* met, *the court does not have jurisdiction.*

The requirements of section 10 (e) were not met in this case. There does not appear in the transcript filed with the Circuit Court of Appeals a copy of the Board's Order. That which was certified by the Board to be a copy of the "Decision and Order" is not a copy of that which the Board claims is the original Order and which appears in its Appendix on pages 1 to 16. It is not a copy of anything. (Compare R. 1-3 with Appendix to Petitioner's (Board's) Brief pages 1 and 16). A comparison of the first page of the paper filed with the Circuit Court (R. 1) with the first page of that which the Board claims is a copy of the Order (Board's Appendix page 2) discloses that the former has

the date "Decided August 2, 1937" and a syllabus while the latter has neither. The last page of the former document (R. 3) has no date line and no signatures and contains the clause, "Chairman Madden took no part in the consideration of the above Decision and Order." The last page of the latter document (Board's Appendix, page 16) concludes as follows:

> "Signed at Washington, D. C., this 2nd day of August, 1937.
>
> [SEAL.] (s.) DONALD WAKEFIELD SMITH,
> *Member,*
>
> (s.) EDWIN S. SMITH,
> *Member,*
> *National Labor Relations Board.*"

By the following authorities a copy is:

> "A true transcript of an original writing." (Baldwin's Century Edition of Bouvier's Law Dictionary)
>
> "The word 'copy' means, not a reproduction of only a portion of the thing copied, but the whole of it." (I Words and Phrases, Second Series, page 1049)
>
> "In ordinary parlance the word 'copy' means not a reproduction of only a portion of the thing copied, but of the whole of it, it implies or requires identity, and normal or reasonable legibility." 18 Corpus Juris Secundum, 130.

That the word "copy" imparts "a very accurate copy" is the rule laid down in 3 Chitty's General Practice (American Edition, Philadelphia, 1836) at page 583, citing cases.

A transcript of the record not containing a copy of the Board's order is not a transcript of the "entire record" within the meaning of Section 10(e) particularly since that section specifically states that *such transcript must include the Order* of the Board. It necessarily follows that a transcript of the entire record was not filed in this case and the Circuit Court was therefore without jurisdiction.

3. The Circuit Court of Appeals erred in denying petitioner (respondent below) the right to have made a part of the record, the papers served upon it.

The record before the Circuit Court did not contain a copy of that which the Board actually served on petitioner. The Board in its petition for enforcement alleged in paragraph (3) that the Board's decision and order were served on petitioner (respondent below) by sending a copy thereof, by registered mail, to petitioner's attorney (R. 101). This allegation is denied in paragraph "3" of petitioner's answer (R. 103). In support of this denial, the petitioner, after unsuccessful attempts to secure the consent of the Board's Counsel thereto, attempted by motion to have made a part of the record and exhibits in the case the letter and papers actually served by the Board upon petitioner by registered mail, on the ground that it was necessary to have same become a part of the record in order that the Circuit Court might properly consider and determine whether or not the Board was entitled to the relief prayed for and in order that the petitioner's (respondent below) rights might be lawfully protected (R. 105-124).

The service of the Board's Order upon petitioner was a condition precedent to the Board's right to a decree of enforcement of its Order (See point "1" of this Brief). Petitioner contended, as it now contends, that a copy of the Board's Order was never served upon it as required by the Act. To support this contention it endeavored, by its motion, to show the Court what papers actually were served upon it, and further to show that the Board itself described what was served on petitioner's attorney as a copy of its *decision* only.

In making this motion, petitioner relied on and complied strictly with Rule 20(7) of the Circuit Court of Appeals for the Third Circuit, which provides:

> "*Omissions from or Misstatements in Transcript.* If anything material to any party is omitted from the transcript by error or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation or this court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental transcript be certified or a supplemental record prepared and filed." (Third Circuit Rules, 109 F. (2d) XXV.)

In its memorandum in oppositon to petitioner's motion, the Board relied on Section 10(e) of the National Labor Relations Act, (49 Stat. 453, 29 U. S. C. A. Sec. 160(e)) which prescribes the conditions under which the court shall grant leave to a party to adduce additional evidence before the Board. The pertinent portion of this section reads:

> "If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript."

This provision obviously has no application here. The question before the Circuit Court of Appeals on petitioner's motion did not concern the validity of the Board's order but merely the propriety of its enforcement. *N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, (C. C. A. 9th Cir.). Petitioner was not seeking to adduce additional evidence bearing on the matters considered by the Board at its hearing. It sought merely to fortify its denial that the Board's order had been served upon it by showing on the record *exactly what it received.*

We submit that this was petitioner's right, and that the denial by the Court to petitioner of leave so to support its denial constituted a denial to it of the due process of law guaranteed to it by the Fifth Amendment to the Constitution of the United States.

4. The National Labor Relations Act is not applicable to this petitioner for the reason that it is a small highly localized retail business, and was not and is not engaged in interstate commerce or in activities materially affecting commerce within the meaning of the Act.

Petitioner operates a small retail outlet for lumber and building material, doing less than $201,000 worth of business per year (Board's Appendix, 5, footnote 8). Besides the manager and yard superintendent petitioner's entire working force consists of only 13 or 14 persons (Board's Appendix, 4). Almost 100% of its sales are within the State of New Jersey. Occasional deliveries are made in Philadelphia as favors to individual New Jersey customers. The Board itself, however, agreed that petitioner's out-of-state sales were not sufficient to furnish a basis for the Board's jurisdiction (Board's Appendix, 5).

The only interstate business, *if any*, done by petitioner, consists of its purchases of goods from concerns located outside the State of New Jersey. These purchases aggregated $143,846.61 in 1936. (Board's Appendix, 33.) Although petitioner's drivers spent a small fraction of their time bringing goods from Philadelphia, such pick-ups were not necessary to petitioner's business and petitioner used them only as a means of avoiding layoffs. The Board's witness Earl F. Bartling, petitioner's president and general manager, testified as follows:

> "* * * These trucks are maintained purely for purposes of delivery. If we are too busy delivering,

> the wholesaler then proceeds to deliver the lumber which came in. If we are not so busy, rather than lay the men off, we route our trucks into Philadelphia to pick up the material, or if the customer wants something real quick, rather than wait for the wholesaler to make his own delivery, we will send our truck so as to give a little better service. The actual costs to the company is greater in picking up this material than they would be if we let the delivery follow the other channels." (Board's Appendix, 27.)

Complete cessation of such deliveries to petitioner would not have hampered petitioner, the great bulk of whose purchases were brought to it by rail (Board's Appendix, 23, 24). *There is no evidence that when the strike actually did occur, petitioner's business was hampered. All the evidence shows is that a few trucks were turned away by the pickets* (Board's Appendix, 92, 93), *and there is no evidence that the goods in these trucks were not thereafter delivered to petitioner without delay.*

On the strength of these facts, we submit that petitioner's activities are not and were not of a nature to render it subject to the Act. We acknowledge that the terms "commerce" and "affecting commerce" have been broadened considerably by the courts in their interpretation of the Act. But never have they gone so far as to hold that a retail business such as that of petitioner is a proper subject of the Board's jurisdiction. We submit that they should not do so now.

The Act was never intended to apply to small, highly localized enterprises engaged in retail trade. Its constitutionality was upheld in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, on the ground that it was not, as was contended by the respondent in that case, an "attempt to regulate all industry, thus invading

the reserved powers of the States over their local concerns." (Id. at p. 29). The court said further:

> *"That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system"* (Id. at p. 30).

In another portion of the same opinion the Court said:

> *"But because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country,* it does not follow that *other* industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern" (Id. at p. 41).

It is thus clear that, in upholding the constitutionality of the Act, this Court did not intend to permit Congress to transcend the boundary between that commerce which was interstate and which it might legitimately regulate, and those activities which are essentially local in nature.

The subsequent decisions which have served to fill in the interstices in the skeletal structure of the Act, and to outline its scope and limitations have preserved this essential distinction. These decisions show the line of demarcation to be a nebulous one. The activities of an employer, to render him subject to the Act, must have a "close", "intimate", and "substantial" effect upon and relation to, interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin, supra. Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197. Which activities have and which do not have, such an effect cannot be determined by rule of thumb. *National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601.

The existence of jurisdiction must depend upon the facts of the individual case. And the distinction between the en-

terprise which is subject to the Act because of the directness and immediacy of its effect upon Interstate Commerce, and the enterprise which does not so impinge upon commerce as to be subject to the Act, may be one of degree. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453. In any event, somewhere between the far-flung industrial empires and the business of the small town merchant there is a dividing line beyond which the jurisdiction of the Board does not extend. We submit that the retail lumber business of this petitioner is beyond that line, and that *this case* calls for the application of the maxim *de minimis*, to the effect of petitioner's business on interstate commerce. *N. L. R. B.* v. *Fainblatt, supra.*

The great bulk of the cases decided under the Act, where the commerce question was involved, fall into three main classifications. These are as follows:

A. Those in which all or part of the employer's business necessitated direct participation in interstate commerce, the work of its employees being functional thereto. Typical of these is *Washington, Virginia & Maryland Coach Co.* v. *N. L. R. B.*, 301 U. S. 142, which involved an interstate bus company. There is, of course, no doubt that such employees are subject to the Act. In the same category, though on a much smaller scale, are enterprises such as that involved in *N. L. R. B.* v. *White Swan Co.*, 118 F. (2d) 1002 (Certiorari denied October 13, 1941), where a laundry situated in Wheeling, West Virginia, on the Ohio State line, operated several delivery and pick-up routes in Ohio, whereby its trucks regularly moved between it and its customers back and forth across State lines. While the employer in this latter case argued that it was a local enterprise, it was in fact, considerably larger than this petitioner and the regular flow of materials across the Ohio border from its customers to it and from it to its customers con-

stituted an appreciable portion of its business. These facts serve amply to distinguish it from the case at bar.

B. Those in which the employer's business has become so integrated upon a national basis with the inflow of raw materials and the outflow of manufactured products across State lines that it has acquired a key position in the stream of commerce, so that stoppage of its activities would seriously affect such commerce. Typical of these are *N. L. R. B.* v. *Jones & Laughlin Steel Corp., supra, Continental Oil Co.* v. *N. L. R. B.*, 113 F. (2d) 473 (C. C. A. 10th), *Texas Co.* v. *N. L. R. B.*, 112 F. (2d) 744 (C. C. A. 5th), and other cases involving manufacturers and processors whose businesses extend beyond State lines, and are often nation-wide in scope. *Standard Lime & Stone Co.* v. *N. L. R. B.*, 97 F. (2d) 531 (C. C. A. 4th), exemplifies the medium sized concerns which, though smaller, fall in the same category. These cases are scarcely more in point than the first group. How can a steel corporation or a great oil company, the stoppage of one of whose plants may shut down not only its own business but the businesses of other companies which serve it throughout the nation, be compared with a retailer such as respondent, whose position in the economic scheme is such that its failure would hardly cause a passing comment?

C. In this category we find cases in which the employment relation itself is not in interstate commerce—concerns which are not, strictly speaking, "engaged in" interstate commerce at all, but which become subject to regulation under the Act because their activities have a direct impact upon interstate commerce. Here we find the coal mining cases such as *Clover Fork Coal Co.* v. *N. L. R. B.*, 97 F. (2d) 331 (C. C. A. 6th), *N. L. R. B.* v. *Crowe Coal Co.*, 104 F. (2d) 633 (C. C. A. 8th), and *N. L. R. B.* v. *Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6th). Here also we find

the cases of the big lumbering concerns—*N. L. R. B.* v. *Biles-Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th); fruit growers' cooperatives—*North Whittier Heights Citrus Ass'n* v. *N. L. R. B.*, 109 F. (2d) 76; *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453—and the great power companies, *Consolidated Edison Co.* v. *N. L. R. B.*, *supra*. And here we have the much discussed *Fainblatt* case.

In all these cases the volume of the employer's business was vastly greater than that of the business of this respondent. In the coal company cases the employers were units of an industry whose smooth functioning is vital to a large section of American industry.

In the fruit company cases there was involved a young and lusty newcomer to the nation's industrial scene. Its importance and the dependency of the fruit growers and consumers alike upon the smooth functioning of the packing houses, put the latter in a pivotal position so that their stoppage would have an immediate impact on interstate trade. *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, *supra*; *North Whittier Heights Citrus Ass'n* v. *N. L. R. B.*, *supra*.

These cases demonstrate that it is not the direction of the flow of goods in interstate commerce which determines the applicability of the Act. *It is rather the substantial effect of an employer's activities on that commerce which endow the Board with jurisdiction.*

This brings us to the *Fainblatt* case, which still represents the farthest point to which this Court has gone in upholding the jurisdiction of the Board. In that case the respondent was a clothing processor who regularly received materials from their owner in New York, fashioned them into clothing in New Jersey, and returned them to New York, whence they were shipped in interstate commerce. Sometimes the owner's New Jersey representative shipped

the goods directly from respondent's plant into interstate commerce. As this Court said:

> "Throughout the year there is normally a continuous day-by-day flow of raw materials to respondent's factory from points without the state and of finished garments from respondent's plant to New York City and other points outside New Jersey."

The owner of the goods so processed was a New York corporation, wholly owned by respondent's own children. Thus Fainblatt, although technically operating an independent enterprise, served in fact, to quote the Board, as "the principal manufacturing department of Lee Sportswear, a company engaged in selling sporting goods in interstate commerce." *Benjamin Fainblatt et al.*, 1 N. L. R. B. 864, 868. Fainblatt had a force of 60 workers which was later raised to 200. He normally processed a thousand dozen garments a month.

On these facts the Circuit Court of Appeals for the Third Circuit ruled that the Board had no jurisdiction. This Court reversed the Circuit Court and affirmed the Board's order on the ground that interstate commerce was directly involved in the continual transportation of goods back and forth across state lines, and that it could not be said that respondent's effect on such commerce was not substantial. This Court said:

> "Examining the Act in the light of its purpose and of the circumstances in which it must be applied we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected *more than that to which courts would apply the maxim de minimis.*"

This Court recognized that it was broadening the concept of interstate commerce considerably beyond the then prevailing notions. Yet its opinion clearly recognized, as

we have heretofore pointed out, that there is a point where the Board's jurisdiction ends. The holding in the *Fainblatt* case was merely that, though the case was an extreme one, that point had not yet been reached.

That this case is infinitely more extreme than the *Fainblatt* case will be readily apparent to this Court. Against 200 employees we have 12 or 13. Against a never-ceasing flow of goods back and forth across state lines we have a few purchases from out-of-state concerns which amount annually to a very small sum. If the applicability of the Act to Fainblatt was a matter of serious doubt, then its inapplicability to this petitioner should admit of no doubt at all! *Petitioner's business cannot have any impact on interstate commerce greater than that to which the maxim de minimis would apply.*

We respectfully submit that Suburban Lumber Company cannot be held subject to the jurisdiction of the Board without virtually destroying the distribution of powers between the Federal Government and the several states prescribed by the Constitution of the United States. That Congress should have authority to regulate local business was never intended by the framers of the Constitution. If this petitioner can be regulated by Congress, then that body, by using the words "interstate commerce" can regulate all local enterprise, destroy most of the regulatory powers of the States, and virtually create a totalitarian system of government within the Constitution itself. Such a possibility has been spoken of before by dissenting justices. *Cf.* Mr. Justice McReynolds dissenting in *N. L. R. B.* v. *Fainblatt supra.* The present case represents the very *reductio ad absurdum* of the term "interstate commerce" which those justices feared. Such a result as the Board contends for here was no more contemplated by Congress when it passed the National Labor Relations Act than it was by the framers of the Constitution.

For the foregoing reasons, we respectfully urge that the Board was without jurisdiction over petitioner.

In view of the broad powers vested in the National Labor Relations Board it becomes a matter of great national concern that the limits of the Board's jurisdiction be precisely determined. The scope of the Board's authority has been steadily widened by the decisions of this Court. We earnestly urge upon the Court that the Board in this instance has overstepped the boundaries of that authority. Such a determination is of vital moment to every local retail business in the country.

5. Conclusion.

We, therefore, submit that the Circuit Court of Appeals for the Third Circuit was without jurisdiction in the matter for the reasons urged; that the Circuit Court erred in denying petitioner's motion and in decreeing enforcement of the order of the National Labor Relations Board and that the petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted,

FLOYD H. BRADLEY,
Counsel for Petitioner.

Camden, New Jersey, October 30, 1941.